

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ROBERT P. LARGESE, REP. MARK J.  
CARRON, REP. EMILE J. GOGUEN, REP.  
ROBERT S. HARGRAVES, REP. PETER J.  
LARKIN, REP. JAMES R. MICELI, REP.  
PHILIP TRAVIS, SEN. STEVEN C.  
PANAGIOTAKOS, REP. CHRISTOPHER P.  
ASSELIN, REP. EDWARD G. CONNOLLY,  
REP. JOHN A. LEPPER, REP. ELIZABETH  
A. POIRIER,

Plaintiffs,

vs.

Case No. 04-10921-JLT

SUPREME JUDICIAL COURT FOR THE  
STATE OF MASSACHUSETTS;  
CHIEF JUSTICE MARGARET MARSHALL,  
JUSTICE ROBERT J. CORDY, JUSTICE  
JUDITH A. COWIN, JUSTICE JOHN M.  
GREANEY, JUSTICE RODERICK L. IRELAND,  
JUSTICE MARTHA B. SOSMAN, JUSTICE  
FRANCIS X. SPINA, in their official capacities  
as Justices of the Supreme Judicial Court of  
Massachusetts; MASSACHUSETTS  
DEPARTMENT OF PUBLIC HEALTH;  
CHRISTINE C. FERGUSON, in her official  
capacity as Commissioner of the Massachusetts  
Department of Public Health; JUDY A.  
McCARTHY, in her official capacity as City  
Registrar for the City of Boston; CITY AND  
TOWN CLERKS 1-350,

Defendants.

**PLAINTIFFS' OPPOSITION TO MOTION TO INTERVENE BY GOODRIDGE  
PLAINTIFFS**

Plaintiffs oppose the Motion to Intervene by Hillary Goodridge, Julie Goodridge, David Wilson, Robert Compton, Michael Horgan, Edward Balmelli, Maureen Brodoff, Ellen Wade, Gary Chalmers, Richard Linnell, Heidi Norton, Gina Smith, Gloria Baily, and Linda David (hereafter "Proposed Intervenor") as the Proposed Intervenor do not have a valid interest relating to the property or transaction that comprises the subject of the action, the disposition of the action will not

impair the applicants ability to protect any interest that they might have, and as their interests are already adequately represented by the Defendants.

**I. PROPOSED INTERVENORS SHOULD BE NOT BE PERMITTED TO INTERVENE.**

In order to intervene, an applicant must meet four criteria: (1) the motion must be timely, (2) the prospective intervenor must have an interest relating to the property or transaction that comprises the subject of the action, (3) the disposition of the action must run the risk of impairing the applicant's ability to protect that interest, and (4) that interest must not be adequately represented by any existing party. *See* Fed. R. Civ. P. 24(a)(2); *see also* *Daggett v. Commission on Governmental Ethics and Election Practices*, 172 F.3d 104 (1<sup>st</sup> Cir. 1999).

**A. Proposed-Intervenors Do Not Have An Interest Relating To The Property or Transaction In The Subject Of The Action That Will Be Impaired By The Outcome Of This Case.**

In order to intervene, the Proposed-Intervenors must have a direct interest in the subject matter of the litigation. The interest of the proposed intervenors is consequential, not direct, and any such interest is insufficient to permit intervention. *See, e.g., Pharmaceutical Research and Manufacturers of America, v. Commissioner, Maine Department of Human Services*, 201 F.R.D. 12 (D.Me. 2001)(intervenor must have direct legal interest to intervene). The interest cannot be consequential, or indirect. In the case at hand, the Proposed Intervenor's interests is not direct, but consequential. The subject of the litigation is whether the Supreme Judicial Court violated the Separation of Powers, and acted in violation of the Massachusetts constitution and thus the United States Constitution. The Proposed Intervenor's interests is only in the right to marry as same-sex couples. This lawsuit is not about whether the Proposed-Intervenors should be able to marry. This lawsuit is about the procedures that were utilized by the Supreme Judicial Court in radically changing the state's marriage laws. The Proposed Intervenor's interest is at least one step removed from a direct interest in issues of this case. The Proposed Intervenor's interest is the right to same-sex marriages, not the ultimate issue of whether Defendants violated state law and radically redefining marriage.

The Proposed Intervenor's interest will not be impaired by the outcome of this case. If the Proposed Intervenor wants the ability to marry as same sex couples, then they can utilize the democratic process to effectual change in the laws, just like every other citizen. If this Court restores a republican form of government in Massachusetts, then the orderly change of law will be enhanced, not diminished. Consequently, the Proposed Intervenor's interest in effectuating change in the marriage laws will not be impaired by the outcome of this case, but strengthened, as the democratic process will be strengthened.

**B. Proposed-Intervenor's Interests Are Adequately Represented By The Existing Defendants.**

Even if the Proposed-Intervenor had a valid interest in the subject of this case, and even if that interest would be impaired by the outcome of this case, this does not mean that they can intervene as their interests are already adequately represented by the existing defendants - the Supreme Judicial Court and the Supreme Court Justices. *See Ruthardt v. U.S.*, 303 F.3d 375 (1<sup>st</sup> Cir. 2002)(denying intervention by party with "enormous practical stake in case" where the government defendant could adequately represent intervenor's interest). "Adequacy is presumed, although rebuttably so, where a government agency is the representative party." *See Pub. Serv. Co. v. Patch*, 136 F.3d 197, 207 (1<sup>st</sup> Cir.1998)(requiring a "strong affirmative showing" that the agency is not adequately representing the would-be intervenor's interests).

Where the party seeking to intervene has the same ultimate goals as a party already in the suit, courts have applied a presumption of adequate representation. To overcome that presumption, petitioner must demonstrate adversity of interest, collusion or nonfeasance. *Moosehead Sanitary Dist. v. S.G. Philips Co.*, 610 F.2d 49, 54 (1<sup>st</sup> Cir. 1979); *see also U.S. v. Hooker Chemicals & Plastics*, 749 F.2d 968 (2<sup>nd</sup> Cir. 1984)("Under the *parens patriae* concept, however, a state that is a party to a suit involving a matter of sovereign interest is presumed to represent the interest of all its citizens"); *New Orleans Public Service, Inc. v. United Gas Pipe Line Co.*, 690 F.2d 1203 ("where governmental parties are already present in case, private parties must make more than a minimal

showing of inadequate representation,” and requiring consumers to show that the governmental party is “ill-equipped or unwilling” to protect their interest before finding inadequate representation).

The Proposed Intervenors have failed to show adversity of interest, collusion, or nonfeasance on behalf of the Massachusetts Supreme Judicial Court or the Supreme Court justices. To the contrary, the Supreme Judicial Court has usurped power not belonging to it, in order to grant Proposed Intervenors a right to marry as same sex couples in Massachusetts, a right that had not existed anywhere in the United States prior to the *Goodridge* decision. Not only will the Supreme Judicial Court adequately represent the Proposed-Intervenor’s interests, it will zealously do so.

## **II. CONCLUSION**

Plaintiffs respectfully request that this court deny the Motion to Intervene.

**CERTIFICATE OF SERVICE**

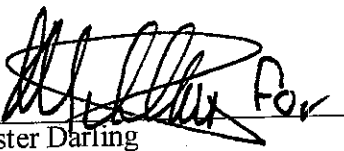
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by hand delivery this 12th day of May, 2004, to the following:

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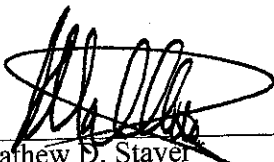
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